IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.357 OF 2007

Rohit Anandsingh Kotwal .. Petitioner.
Vs.
State of Maharashtra & Ors. .. Respondents.

Mr.K.H.Holambe Patil for the petitioner.
Ms.P.H.Kantharia APP for the State.

CORAM : SMT.RANJANA DESAI &
D.B.BHOSALE, JJ.
DATED : 20TH JUNE, 2007.

P.C.:

. Heard learned counsel for the petitioner and learned A.P.P. for the State.

2. The petitioner is the accused in Crime No.3214 of 2006 registered under sections 65 and 66 of the Information Technology Act, 2000. We have heard learned counsel for the petitioner at great length. The learned counsel contended that the crime registered against the petitioner deserves to be quashed because no offence can be said to have been committed by him. The learned counsel led stress on section 65 of the said Act. Section 65 reads thus:

> "65. Tampering with computer source documents:- Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept

> or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both."

. The learned counsel contended that under this section whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend to two lakh rupees. The learned counsel contended that there is no law in force which requires the computer source code to be kept or maintained and, therefore, no offence can be said to have been committed by the petitioner.

3. Prima facie, in our opinion, section 65 of the said Act cannot be interpreted in the manner in which the learned counsel for the petitioner wants us to interpret it. But we do not deem it appropriate to consider the contentions urged by the learned counsel for the petitioner at this stage and we keep all contentions raised in the petition open.

4. The petitioner’s contentions can only be

considered when he co-operates with the investigation, evidence is collected and charge sheet is filed. At this stage the entire proceedings cannot be quashed on the ground of such interpretation of section 65. Besides, we may note that the petitioner is also charged under section 66 of the said Act which pertains to hacking of computer system. In our opinion, therefore, no case is made out for quashing of the case.

5. We deem it fit to note the serious grievance made by Ms.Kantharia, learned A.P.P. for the State that the petitioner has consistently avoided service of notice of arrest issued by the investigating agency. The investigating agency wanted to issue 72 hours notice pursuant to the order passed by the Sessions Court. It is only when this grievance was raised by the learned A.P.P. before us on the last occasion and we directed the petitioner to appear in this court that the petitioner appeared today and the notice has been served on him. In the circumstances the petition is dismissed.

(SMT.RANJANA DESAI, J.)

(D.B.BHOSALE, J.)

3. We do not deem it appropriate to consider the contentions urged by the learned counsel for the petitioner at this stage. We cannot loose a sight of the fact that the offence is registered not only under section 65 but it is also registered under section 66 of the Information Technology Act. Though prima facie we have our own doubts about contentions urged by the learned counsel for the petitioner, in our opinion, looking to peculiar facts and circumstances of the case we keep all the contentions open for the petitioner to agitate only when the petitioner co-operates with the investigation, evidence is collected and the charge-sheet is filed before the court. In any case, at this stage the entire proceedings cannot be quashed on the ground of interpretation of section 65. The investigating agency needs to be given a free hand to carry out the investigation. In our opinion, no case is made out for quashing of the case. We deem it fit to note the serious grievance made by Ms.Kantharia, learned A.P.P. for the State that the petitioner has consistently avoided service of notice of arrest issued by the investigating agency. The investigating agency wanted to issue 72 hours notice pursuant to the order passed by the Sessions Court. It is only when this grievance was raised by the learned A.P.P. before us on the last occasion and we

directed the petitioner to appear in this court that the petitioner appeared today and the notice has been served on him. In the circumstances the petition is dismissed.

(SMT.RANJANA DESAI, J.)

(D.B.BHOSALE, J.)